

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 412

Introduced by Senator Vargas

February 16, 2011

An act to amend Section 580e of the Code of Civil Procedure, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 412, as amended, Vargas. Mortgages: deficiency judgments.

Existing law prohibits a deficiency judgment if real property or an estate for years has been sold by the mortgagee or trustee under power of sale in the mortgage or deed of trust. Existing law also prohibits a deficiency judgment under a note secured by a first deed of trust or first mortgage for a dwelling of not more than 4 units in any case in which the trustor or mortgagor sells the dwelling for less than the remaining amount of the indebtedness due at the time of sale with the written consent of the holder of the first deed of trust or first mortgage, and provides that written consent of the holder of the first deed of trust or first mortgage to that sale obligates the holder to accept the sale proceeds as full payment and to fully discharge the remaining amount of the indebtedness on the first deed of trust or first mortgage.

~~This bill would define "note" for these purposes as one made by a natural person, as specified~~ *delete the provisions regarding written consent of the holder of the deed of trust or mortgage obligating the holder to accept the sale proceeds as full payment, as described above. The bill would instead require that, following transfer of title by an instrument recorded in the county where the real property is located and the tender of the sale proceeds, as agreed, the rights, remedies, and obligations of the relevant parties pursuant to the instrument be*

treated and determined as if the dwelling had been sold through foreclosure under a power of sale contained in the deed of trust or mortgage, as specified. The bill would except certain parties from the application of these provisions, including if the trustor or mortgagor is a limited liability company or partnership or if a public utility, as specified, made the mortgage or deed of trust. The bill would require that any waiver of these provisions is void and against public policy.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 580e of the Code of Civil Procedure is
2 amended to read:
3 580e. (a) No judgment shall be rendered for any deficiency
4 ~~under~~ *upon* a note secured by a first deed of trust or first mortgage
5 for a dwelling of not more than four units, in any case in which
6 the trustor or mortgagor sells the dwelling for *a sale price* less
7 than the remaining amount of the indebtedness ~~due~~ *outstanding* at
8 the time of sale, *in accordance* with the written consent of the
9 holder of the first deed of trust or first mortgage. ~~Written consent~~
10 ~~of the holder of the first deed of trust or first mortgage to that sale~~
11 ~~shall obligate that holder to accept the sale proceeds as full payment~~
12 ~~and to fully discharge the remaining amount of the indebtedness~~
13 ~~on the first deed of trust or first mortgage. Following the voluntary~~
14 ~~transfer of title to a buyer by grant deed or by other document of~~
15 ~~conveyance recorded in the county where all or part of the real~~
16 ~~property is located and the tender to the mortgagee, beneficiary,~~
17 ~~or the agent of the mortgagee or beneficiary of the sale proceeds,~~
18 ~~as agreed, the rights, remedies, and obligations of any holder,~~
19 ~~beneficiary, mortgagee, trustor, mortgagor, obligor, obligee, or~~
20 ~~guarantor of such note, deed of trust, or mortgage, and with respect~~
21 ~~to any other property that secures such note, shall be treated and~~
22 ~~determined as if such dwelling had been sold through foreclosure~~
23 ~~under a power of sale contained in the deed of trust or mortgage~~
24 ~~for a price equal to the sale proceeds received by the holder, in~~
25 ~~the manner contemplated by Section 580d.~~
26 (b) If the trustor or mortgagor commits either fraud with respect
27 to the sale of, or waste with respect to, the real property that secures
28 the first deed of trust or first mortgage, this section shall not limit

1 the ability of the holder of the first deed of trust or first mortgage
2 to seek damages and use existing rights and remedies against the
3 trustor or mortgagor or any third party for fraud or waste.

4 (c) This section shall not apply if the trustor or mortgagor is a
5 corporation, *limited liability company*, *limited partnership*, or
6 political subdivision of the state. *This section shall also not apply*
7 *to any deed of trust, mortgage, or other lien given to secure the*
8 *payment of bonds or other evidence of indebtedness authorized or*
9 *permitted to be issued by the Commissioner of Corporations, or*
10 *which is made by a public utility subject to the Public Utilities Act*
11 *(Part 1 (commencing with Section 201) of Division 1 of the Public*
12 *Utilities Code).*

13 ~~(d) For purposes of this section, “note” means a note made by~~
14 ~~a natural person or by a trustee of a trust created by a natural person~~
15 ~~for a loan made primarily for personal, family, or household~~
16 ~~purposes. “Note” does not include a note made for a loan primarily~~
17 ~~for agricultural, business, or commercial purposes, including a~~
18 ~~loan to finance the construction of a residential subdivision.~~

19 (d) *Any purported waiver of the provisions of subdivision (a)*
20 *by a person covered by this section shall be void and against public*
21 *policy.*